



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

## MEMORANDUM

**To:** Chairperson and Authority Members      **Date:** November 30, 2009  
**From:** Mehdi Morshed, Executive Director  
**Subject:** Agenda Item 3 – Rescission of Resolution Certifying Program EIR, Bay Area to Central Valley

### Discussion

This agenda item provides for the California High-Speed Rail Authority (Authority) to comply with the final judgment and peremptory writ of mandate in the litigation, *Town of Atherton, et al., v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court Case No. 34-2008-80000022.

### Background

On July 9, 2008, the Authority adopted Resolution 08-01. Through this resolution, the Authority took the following actions:

- (1) certified the Final Program Environmental Impact Report (EIR) for the Bay Area to Central Valley High-Speed Train System as being in compliance with the California Environmental Quality Act (CEQA);
- (2) approved Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program as required by CEQA; and
- (3) approved the Pacheco Pass Network Alternative with San Francisco and San Jose Termini, preferred alignments, and preferred station location options for further study in project-level EIRs.

On August 8, 2008, the Town of Atherton, Planning and Conservation League, City of Menlo Park, Transportation Solutions Defense and Education Fund, California Rail Foundation, and Bayrail Alliance filed a lawsuit in the form of a petition for writ of mandate and complaint for injunctive and declaratory relief (Atherton lawsuit). The Atherton lawsuit alleged that the Authority's program EIR for the Bay Area to Central Valley High-Speed Train System violated CEQA in numerous ways.

On August 26, 2009, following lengthy briefing and a hearing on the merits of the case, the trial court issued a ruling. In the ruling, the trial court concluded that the Authority's program EIR complied with CEQA in most respects, including its analysis of alternatives and its analysis of impacts and mitigation in the areas of biology, noise, aesthetics, growth, heritage trees. The trial court ruling did, however, indicate that the program EIR required corrective work and recirculation in the following areas:

- description of the alignment of HST tracks between San Jose and Gilroy;

- impacts to surrounding businesses and residences, the Monterey Highway, and Union Pacific freight operations between San Jose and Gilroy; and
- land use impacts associated with Union Pacific's denial of the use of its right-of-way.

The court also concluded that the Authority's CEQA finding on vibration impacts was not supported by substantial evidence.

On November 3, 2009, the trial court issued a final judgment in the case which incorporated its August 26, 2009, ruling by reference. On November 6, 2009, the petitioners in the case served the final judgment and peremptory writ of mandate on the Authority. The peremptory writ of mandate directs the Authority to rescind Resolution 08-01 and to revise and recirculate its program EIR consistent with the final judgment and CEQA prior to making new programmatic decisions. The peremptory writ of mandate does not direct the Authority to exercise its discretion in any particular way.

To comply with the final judgment and peremptory writ of mandate, the Authority must take several steps: (1) rescind resolution 08-01; (2) prepare and circulate for public review and comment the revisions to the final program EIR identified by the trial court; (3) consider the revised final program EIR and the entire record of proceedings prior to certifying the revised final program EIR for its compliance with CEQA; (4) consider the revised final program EIR and the entire record of proceedings prior to making a new decision selecting a preferred network, preferred alignments, and preferred station location options for further study; (5) consider the revised final program EIR and the entire record of proceedings before it prior to adopting CEQA findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program.

The attached draft resolution provides the legal mechanism by which the Authority can begin to comply with the trial court's final judgment and peremptory writ of mandate. The resolution rescinds prior resolution 08-01, directs staff to prepare the needed revisions to the EIR, and directs staff to provide an informational staff report to the board following the close of the public comment period on the revised material. If the Authority chooses to adopt the attached resolution, this action will be reported to the trial court as evidence of the Authority's effort to comply.

**Recommendation:**

I recommend that the Authority adopt the attached resolution and begin the process of complying with the final judgment and peremptory writ of mandate.